IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED: 12/8/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN.

TAX CASE No.574 of 1989.

Smt.P.Balammal, Karur. ...Applicant.

-Vs-

The Controller of Estate Duty,
Madras. ... Respondent.

This Tax Case is filed against the order of the Income Tax Appellate Tribunal in R.A.No.584/Mds/80 (EDA.No.23/Mds/1978-79).

!For Applicant ..... Mr.P.P.S.Janardhana Raja.

^For Respondent ..... Mr.T.C.A.Ramanujam
Sr.Standing Counsel
for I.T.

...

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

This is a reference under the Estate Duty Act, 1953. One K. Periaswamy died on 28.8.1975. At the time of his death, he was a partner in a firm styled M/s Amarjothi Fabrics. Subsequent to the date of death of K.Periaswamy, the other partners of the firm disclosed under the Voluntary Disclosure of Income and Wealth Act, 1976 the stock valued at Rs.2,97,000/- and also paid tax on the said amount. The stocks so declared represented the concealed income of the firm and the proportionate tax liability of K.Periaswamy was deducted from his share of the income disclosed under the Voluntary Disclosure Scheme and necessary entries were also made in the account books of the firm. The accountable person in the estate duty proceedings of K.Periaswamy claimed that the proportionate amount of tax paid by the firm under the Voluntary Disclosure Scheme in relation to K.Periaswamy's share should also be taken into account in determining the principal value of the estate of the deceased. The Assistant Controller rejected the claim of the accountable person on the ground that the tax liability arose after the death of the deceased K.Periaswamy and there was no

subsisting liability or charge at the time of his death and hence, the claim for deduction of the tax paid could not be allowed. On appeal, the Appellate Controller of Estate Duty confirmed the order of the Assistant Controller. On further appeal by the accountable person, the Income Tax Appellate Tribunal held that there was no subsisting liability or charge at the time of the death of K.Periaswamy with reference to the liability to tax paid under the Voluntary Disclosure Scheme and the claim for deduction of the liability was inadmissible. The accountable person, aggrieved by the order of the Tribunal, sought for a reference and the Appellate Tribunal has stated a case and referred the following question of law:-

"Whether on the facts and in the circumstances of the case the Tribunal was right in law that the tax paid under the Voluntary Disclosure Scheme, 1975 was not deductible in computing the principal value of the estate passing on death?".

2. Mr. P.P.S.Janarthana Raja, learned counsel for the applicant submitted that the liability towards tax was a pre-subsisting liability of the firm on the date of death of K.Periaswamy and what the firm has done was to declare the undisclosed income which was in the form of stocks and since the stocks were taken into account, the tax liability in proportion to the stock should also be taken into account.

3. Mr.T.C.A.Ramanujam,learned senior standing counsel for the Revenue, on the other hand, submitted that K.Periaswamy died before the disclosure under the Voluntary Disclosure Scheme was declared and he was not even aware of the disclosure made by the firm and the liability under the Voluntary Disclosure Scheme came long after the death of K.Periaswamy and the liability was created by the accountable person, who inherited the property without any charge and therefore, the liability is not deductible. Mr.T.C.A.Ramanujam relied on the decisions of the Supreme Court in the case of "NAWAB MIR BARKA ALI KHAN BAHADUR .VS. CONTROLLER OF ESTATE DUTY" (222 I.T.R. 612), "P.LEELAVATHAMMA .VS.CONTROLLER OF ESTATE DUTY" (188 I.T.R. 803), the decision of the Punjab High Court in "KASHMIRI LAL TALWAR .VS. CONTROLLER OF ESTATE DUTY" (223 I.T.R. 747) and also the decision of this Court in "SMT. K.N.SITA .VS. CONTROLLER OF ESTATE DUTY" (239 I.T.R. 108), wherein this Court held that provision for marriage expenses of unmarried daughters is not deductible under the Estate Duty Act.

4. We have carefully considered the submissions of the learned counsel for the parties. The chargeable event in the Estate Duty Act is the death of a person and the charge is on the properties passing on the death of the person. Part VI of the Estate Duty Act deals with the deductions in determining the principal value of the estate and Section 44 of the said Act deals with the deduction of 'debts and encumbrances'. There is no dispute that if the debt was a subsisting debt on the date of death of the deceased, it is deductible. The decisions relied upon by the learned senior standing counsel for Revenue, reported in "P.LEELAVATHAMMA v. CONROLLER OF ESTATE DUTY" (188 I.T. R. 803) and "NAWAB MIR BARKAT ALI KHAN BAHADUR v. CONTROLLER OF ESTATE DUTY" (222 I.T.R.612) dealt with the deductibility of estate duty paid in determining the principal value of the estate either under Section 36 or 44 of the Act. The Supreme Court held that the amount of estate duty paid is not liable to be taken into account in determining the principal

value of the estate either under Section 36 of the Act, nor deductible under Section 44 of the Act as the estate duty liability under the Estate Duty Act arose subsequent to the death and therefore, not liable to be taken into account. A similar view was taken by the Punjab and Haryana High Court in "KASHMIRI LAL TALWAR . VS. CONTROLLER OF ESTATE DUTY" (223 I.T.R.747).

5. Learned counsel for the Revenue also relied on the decision of this Court in "SMT.K.N.SITA .VS. CONTROLLER OF ESTATE DUTY" (239 I.T. R.108) where this court considered the deductibility of the provision for maintenance expenses for the wife and unmarried daughters and for marriage expenses of unmarried daughters. This court held that in the absence of any evidence to show that the estate of the deceased was burdened with any debt or incumbrance by reason of the failure of the deceased to act up to his statutory obligation, the amount set up for as a provision was not deductible. The decision in the case of SMT. K.N.SITA (239 I.T.R.108) cited supra is distinguishable as it was held that in the absence of a charge on the estate, the amount set apart for a provision is not deductible. There is no dispute that after the date of the death of the assessee, the other partners of the firm made a declaration under voluntary disclosure scheme and the said Act itself came into force on 8th October 1975. The Voluntary Disclosure Act enables a person to disclose the undisclosed income by making a declaration in respect of the income chargeable to tax which had escaped assessment by reason of the omission or failure on the part of the declarant to make a return under the provisions of the Indian Income Tax Act, 1922 or the Income Tax Act 1961 or to disclose fully and truly all material facts necessary for his assessment or otherwise. We are of the view that though the declaration was made subsequent to the date of the death of the deceased, the declaration made is in respect of the income which was earned during the earlier previous years to which the declaration related and which was liable to be assessed. The Voluntary Disclosure Act only enables the assessee to come out with the true facts as regards the income earned by the declarant during the prior previous years in which the income was accrued so that the tax liabilities for those years are settled without the fear of levy of penalty or launching of prosecution. The partners of the firm in which the deceased was a partner declared the income which were in the form of stocks and the proportionate value of stocks was taken into account for the purpose of levy of estate duty. We are of the opinion that once the declaration was accepted, it is meant that the Department has accepted the position that the income was earned during the previous years during the period in which that income was earned, but was omitted to be returned. Consequently, the liability to tax on the concealed income would arise at the end of the previous years in question in which the income accrued as the declaration itself was made in recognition of the pre-existing liability. We are of the opinion that no new liability is created under the Voluntary Disclosure Act but the income which accrued and the statutory liability that arose under the Income Tax Act was declared under the provisions of the Voluntary Disclose Act.

6. In "COMMISSIONER OF WEALTH TAX,MADRAS .VS. K.S.N.BHATT" (145 I.T.R. 1) , "COMMISSIONER OF WEALTH TAX, GUJARAT .VS. VADILAL LALLUBHAI" (145 I.T.R.7) and "COMMISSIONER OF WEALTH TAX, GUJARAT .VS. VIMLABEN VADILAL MEHTA" (145 I.T.R.11), the Supreme Court has taken a view that the income tax liability crystalises on the last day of the previous year relevant to the assessment year and it was a liability in praesenti on the

last date of the previous year though payable subsequently. The Supreme Court has also held that in computing the net wealth of the assessee, the deduction admissible must be calculated on the basis of the tax which was finally quantified on the assessee even though the assessment might be made subsequent to the valuation date. The Allahabad High Court in "COMMISSIO NER OF WEALTH TAX .VS. B.K. SHARMA" (110 I.T.R.902) dealt with the case of deduction of liability which arose on Voluntary Disclosure of Income Scheme under section 68 of the Income-tax Act in determining the net wealth of the assessee and whether the tax paid under the Voluntary Disclose Scheme is a debt which should be deducted in calculating the net wealth. The Allahabad High Court held the liability to pay income tax would arise on the last date of the previous year during which the income was earned and the fact that the assessee did not disclose the income at the appropriate time and evaded tax did not mean that he was not liable to pay tax. The Court also held that Section 68 of the Finance Act 1965 under which the declaration was made prescribed the procedure for assessment of the concealed income but the liability was held to be deductible as a debt. The decision of the Allahabad High Court was approved by the Supreme Court in 'AHMED IBRAHIM SAHIGRA DHORAJI that the liability to tax on concealed income disclosed under the Voluntary Disclosure Scheme is the same as income tax and it constitutes a debt on the valuation date under the Wealth-tax Act and deductible in computation of the net wealth of the assessee. The following observation of the Supreme Court is relevant for the purpose of this case.

"The declaration contemplated under S.68 of the Finance Act,1965, is a declaration in respect of income of earlier years which had been concealed and on which tax was payable during the relevant assessment years in the ordinary course. If the assessee had brought to the notice of the department in the usual course the existence of the incomes which were later on declared under S.68, they would have been taxed during the relevant assessment years. Hence, merely because they are disclosed in a declaration filed under S.68, they cannot cease to be incomes not already charged for income tax. It is true that the Finance Act in question merely levied a fixed rate of income tax in respect of all the incomes disclosed without allowing deductions, exemptions and set-offs under the relevant income tax law. Yet its function was no more than that of a Finance Act passed annually even though it made certain alterations with regard to filing of declaration and computation of taxable income. That the declaration was dependent upon the volition of the declarant and that the liability to tax on the amount mentioned therein was contingent upon the willingness of the declarant to disclose the amount make no difference. Any such voluntary disclosure by an assessee, even in the absence of S.68, would have exposed him to an assessment or reassessment, as the case may be, being made in respect of the sum disclosed as part of the income of the relevant assessment year and with the additional liability to payment of interest and levy of penalty and perhaps

with the right to claim deductions, if any, admissible in the circumstances of the case and the benefit of other procedural rights. The voluntary character of the declaration cannot, therefore, alter the character of the tax".

The Supreme Court in "COMMISSIONER OF WEALTH TAX .VS. SHEO KUMAR GUPTA" (201

I.T.R. 324) has held that the amount of tax paid by a partner in the firm towards the share of the tax payable on the income voluntarily disclosed by the firm under the Voluntary Disclosure Scheme would be deductible as "debt owed" in computing the net wealth of the partner on the relevant valuation date.

7. The Calcutta High Court in "COMMISSIONER OF WEALTH TAX in "AHMED IBRAHIM SAHIGRA DHORAJI .VS. COMMISSIONER OF WEALTH TAX" (129 I.T.R.314) and held that there are no distinguishable principles in Section 68 of the Finance Act, 1965 and the Voluntary Disclosure of Income and Wealth Ordinance Act, 1975 in spite of certain dissimilarities, but the objects of both the schemes are to encourage disclosure of concealed income and there is no distinction in principle regarding the deductibility of the tax paid on the income disclosed voluntarily which relates back to the previous years in which the income was earned. A similar view was taken by the Kerala High Court under the Voluntary Disclosure of Income and Wealth Act 1975 in COMMISSIONER OF WEALTH TAX .VS. RAVINDRANATHAN NAIR (177 I.T.R. 1).

8. We are of the view that the disclosure made under the Voluntary Disclosure Act relates back to previous years in which the income was earned and the liability arose at the end of the previous year in which the income was earned and consequently it will be a debt incurred prior to the death of partner. In other words, it was a preexisting liability and not a new liability which arose subsequent to the date of death of K.Periaswamy. We are also of the view that the object of declaration under the Voluntary Disclosure Act is to disclose the already existing liability and to enjoy the estate free from liability and without fear of penalty or prosecution proceedings. We hold that the liability to income tax on the concealed income arose on the last date of the previous year in which the income was earned and since it was a pre-existing liability, that liability is liable to be deducted as a debt in the computation of the principal value of the estate of the deceased.

9. In the view we have taken, it is not necessary to consider the question that the Assistant Controller of Estate Duty should have taken into account the liability when he took the value of stocks as principal value of income earned though we are not able to appreciate the stand of the Revenue, 'Heads I win; tails you lose'. Accordingly we answer the question referred to us in the negative, in favour of the accountable person and against the Revenue. In the circumstances, there will be no order as to costs.

Index:yes (V.S.S.,J) (N.V.B.,J)
Website: Yes 12 -8-2002.
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To

1.The Assistant Registrar,'
Income Tax Appellate Tribunal,
Rajaji Bhavan,II Floor, Madras.(5 copies).

2.The Secretary,Central Board of Revenue,
New Delhi (3 copies).

3.The Appellate Controller of Estate Duty,
Southern Zone, Madras.

4.The Assistant Controller of Estate Duty,
Thanjavur.

5. The Controller of Estate Duty, Madras.

V.S.SIRPURKAR,J
and
N.V.BALASUBRAMANIAN,J

(nyr)
P.D.Order in
T.C.No.574/89.